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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/819,441	03/28/2001	Lalitha Agnihotri	US010107	2711

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PHILIPS INTELLECTUAL PROPERTY & STANDARDS

P.O. BOX 3001

BRIARCLIFF MANOR, NY 10510

EXAMINER

LAYE, JADE O

ART UNIT	PAPER NUMBER
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2614

DATE MAILED: 01/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/819,441

Applicant(s)

AGNIHOTRI ET AL.

Examiner

Jade O. Laye

Art Unit

2614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 March 2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 August 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/28/01 &amp; 9/3/02</u> | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

The information disclosure statements (IDS) submitted on 3/28/01 and 9/3/02 are in compliance with the provisions of 37 CFR 1.97. Accordingly, the examiner has considered the information disclosure statements.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1, 6, 8, 9, 14, 16, 19, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Black et al. (US Pat. No. 5,774,591).

As to claim 1, Black discloses a facial recognition system, which alters the presentation of the screen based upon an analysis of predefined human interactions. When a user is exposed to the system display (i.e., first item), a camera (system acquisition system) captures the viewer's image. This image is analyzed by the expression recognition system. Based upon this analysis, the system determines whether the screen presentation should be altered. (Col. 26, Ln. 50-67 thru Col. 27, Ln. 1-27 ; Col. 28, Ln. 11-16). Accordingly, Black et al anticipate each and every limitation of claim 1.

Claims 8, 9, 16, 19, and 20 correspond to claim 1 and thus, each is analyzed and rejected as previously discussed. The examiner notes that claim 8 attempts to make a distinction between

“analyzing” and “monitoring.” But, any system (such as disclosed by Black) capable of analyzing information must also monitor that same information in order to store and analyze it.

The examiner also notes that claim 16 adds additional limitations directed to a memory device and processor. It is inherent that Black’s system contains a memory device (for storing predefined human interactions) and processor (specifically disclosed as image acquisition system and expression recognition system).

As to claim 6, Black further discloses his system is capable of analyzing facial expressions of a user. (Col. 26, Ln. 50-67). Accordingly, Black et al anticipate each and every limitation of claim 6.

Claim 14 corresponds to claim 6 and is analyzed and rejected as previously discussed.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

2. Claims 2, 3, 7, 10, 11, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Black et al in view of Hendricks et al. (US Pat. No. 5,798,785).

Claim 2 recites the method of claim 1, wherein said first and alternate items are media content selections. As discussed above, Black contains all limitations of claim 1 but fails to disclose whether the system is capable of displaying first and alternate media content selections. However, within the same field of endeavor, Hendricks discloses a recommending system capable of suggesting media content (i.e., suggesting programs based upon genre/category, actors, etc.). (Col. 3, Ln. 5-20). Accordingly, it would have been obvious to one of ordinary skill in this art at the time of applicant's invention to combine the system of Black with the system of Hendricks in order to provide a system capable of recommending alternate media content selections based upon a user's dissatisfaction with the original media content.

Claim 10 corresponds to claim 2 and therefore, is analyzed and rejected as previously discussed.

Claim 3 recites the method of claim 1, wherein said alternate item is selected based on viewing preferences of said user. As discussed above, Black contains all limitations of claim 1, but fails to disclose the limitation of claim 3. However, within the same field of endeavor,

Hendricks further discloses his system is capable of recommending programs based upon the viewing preferences of the user. (Col. 3, Ln. 5-20). Accordingly, it would have been obvious to one of ordinary skill in this art at the time of applicant's invention to combine the system of Black with the system of Hendricks in order to provide a system capable of displaying an alternate item based upon the viewing preferences of a user.

Claim 11 corresponds to claim 3 and is analyzed and rejected as previously discussed.

Claim 7 recites the method of claim 1, wherein said selecting step is performed by a program content recommender. As discussed in paragraph 1, Black contains all limitations of claim 1, but fails to disclose the limitations of claim 7. However, within the same field of endeavor, Hendricks discloses a content recommender. (Col. 2, Ln. 38-47). Accordingly, it would have been obvious to one of ordinary skill in this art at the time of applicant's invention to combine the systems of Black and Hendricks in order to provide a system capable of recommending content.

Claim 15 corresponds to claim 7 and is analyzed and rejected as previously discussed.

3. Claims 4, 5, 12, 13, 17, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Black et al in view of Chino et al. (US Pat. No. 6,118,888).

Claim 4 recites the method of claim 1, wherein said predefined negative behavior includes auditory commands. As discussed above under paragraph 1, Black contains all limitations of claim 1, but fails to specifically disclose the limitations recited in claim 4. However, within the same field of endeavor, Chino discloses a system capable of interacting with a user via audio, character, and image information. (Abstract). More specifically, the system is capable of reacting to a user's speech. (Col. 1, Ln. 11-61). Accordingly, it would have been obvious to one of ordinary skill in this art at the time of applicant's invention to combine

the systems of Black and Chino in order to provide a system capable of reacting to a user's verbal dissatisfaction with the present display.

Claim 12 corresponds to claim 4 and is analyzed and rejected as previously discussed.

Claim 5 recites the method of claim 1, wherein said predefined negative behavior includes gestural commands. As discussed under paragraph 1, Black contains all limitations of claim 1, and further discloses the system is capable of analyzing a user's head gestures. (Col. 1, Ln. 15-38). However, Chino more broadly discloses his system is capable of analyzing not only head gestures, but bodily gestures as well. (Col. 1. Ln. 11-61). Accordingly, it would have been obvious to one of ordinary skill in this art at the time of applicant's invention to combine the systems of Black and Chino in order to provide a system capable of displaying an alternate item based upon a user's gesture indicating his or her dissatisfaction with the present item displayed.

Claim 13 corresponds to claim 5 and is analyzed and rejected as previously discussed.

Claim 17 recites a system for selecting an item for a user, comprising:

- a. an audio and video device focused on a user;
- b. a memory for storing computer readable code and said viewer profile; and
- c. a processor operatively coupled to said memory, said processor configured to:  
*(perform limitations recited in claim 8)*

As discussed above, Black contains all limitations of claim 8 and the limitation of element "b", so those will not be addressed here. As for element "a", Black discloses his system is capable of tracking/analyzing/monitoring a user's behavior via the use of a camera (i.e., video device), or image acquisition system. (Col. Ln. 26, Ln. 56-61). But, Black fails to disclose whether his system can be used in conjunction with an audio device. However, within the same field of endeavor, Chino discloses his system is capable of reacting to a user's speech; therefore

it is inherent that an audio device is present within the system. (Col. 1, Ln. 11-61). Accordingly, it would have been obvious to one of ordinary skill in this art at the time of applicant's invention to combine the systems of Black and Chino in order to provide a system capable of reacting to a user's behavior via the use of audio and video inputs.

Claim 18 recites the system of claim 17, wherein said processor is further configured to define a plurality of predefined negative behavior suggesting that said user does not like said first item. As discussed above, the combined teachings of Black and Chino contain all limitations of claim 17, and Black further discloses his system is capable of analyzing predefined negative behaviors (i.e., predefined human interactions). (Col. 26, Ln. 61-63). Accordingly, it would have been obvious to one of ordinary skill in this art at the time of applicant's invention to further modify the combined teachings of Black and Chino to also provide a system capable of analyzing predefined negative behaviors.

### *Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- a. Horvitz et al. (US Pat. No. 6,260,035) disclose an intelligent user assistance facility for a software program.
- b. Strubbe et al. (US Pat. No. 5,483,278) disclose a system and method for finding a movie of interest in a large movie database.
- c. Hongo (US Pat. No. 6,677,969) discloses an instruction recognition system having a gesture recognition function.



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- d. Kazama et al. (US Pat. No. 6,111,580) disclose an apparatus and method for controlling an electronic device with user action.
- e. Bentolila et al. (US Pat. Pub. No. 2003/0101449) disclose a system and method for behavioral clustering in television usage.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jade O. Laye whose telephone number is (703)308-6107. The examiner can normally be reached on Mon. 7:30am-3pm, Tues.-Fri. 7:30-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Miller can be reached on (703)305-4795. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Examiner's Initials JL

January 4, 2005.

  
NGOC YENVU  
PRIMARY EXAMINER